

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97528; File No. SR-ICEEU-2023-009)

May 19, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments of the Investment Management Procedures

I. Introduction

On March 23, 2023, ICE Clear Europe Limited (“ICE Clear Europe”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Investment Management Procedures (the “Investment Management Procedures” or the “Procedures”). The Proposed Rule Change was published for comment in the Federal Register on April 5, 2023.³ The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps.⁴ In its role as a clearing agency for clearing security-based swaps, ICE Clear Europe holds and invests assets for a number of reasons. For example, ICE Clear Europe’s Clearing Members transfer to ICE Clear Europe cash

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 97224 (Mar. 30, 2023), 88 FR 20200 (April 5, 2023) (File No. SR-ICEEU-2023-009) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Procedures or the ICE Clear Europe Clearing Rules.

and other assets to satisfy their margin and guaranty fund requirements.⁵ ICE Clear Europe also contributes money to the guaranty fund, and maintains regulatory capital (money that ICE Clear Europe sets aside in order to comply with regulatory requirements to which it is subject).⁶ ICE Clear Europe invests cash received from Clearing Members, its own contributions to the guaranty fund, and its regulatory capital with the goal of obtaining a reasonable rate of return while also maintaining sufficient liquidity for its payment obligations and safeguarding the principal of cash. The Investment Management Procedures set out how ICE Clear Europe will make these investments. They provide the permitted investments and related concentration limits for ICE Clear Europe when investing or securing (i) cash received from Clearing Members, (ii) ICE Clear Europe’s contributions to the guaranty fund, and (iii) ICE Clear Europe’s own regulatory capital.

The proposed rule change relates to the third category, investments of ICE Clear Europe’s own regulatory capital. Currently, the Procedures contain a Table of

⁵ ICE Clear Europe’s Clearing Rules note that initial margin means “the Permitted Cover required to be provided or actually provided . . . to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal in respect of CDS Contracts” ICE Clear Europe Clearing Rules Rule 101. Guaranty fund contributions serve to secure the obligations of a Clearing Member to ICE Clear Europe and may be used to cover losses sustained by ICE Clear Europe in the event of a default of the Clearing Member. ICE Clear Europe Clearing Rules Rule 1103.

⁶ ICE Clear Europe is subject to regulatory capital requirements under its supervision by the Commission, the Bank of England, the Commodity Futures Trading Commission, and as a third-country central counterparty recognized by the European Securities and Markets Authority. For a further discussion of these requirements, see Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the Capital Replenishment Plan, Exchange Act Release No. 97018 (Mar. 2, 2023), 88 FR 14412 (Mar. 8, 2023) (SR-ICEEU-2022-027).

Authorised Investments and Concentration Limits for ICEU’s Regulatory Capital (the “Table”). The Table provides, among other things, the instruments in which ICE Clear Europe may invest its regulatory capital and the maximum maturity that those investments may have.

The proposed rule change edits the maximum maturity of certain investments in sovereign and government agency bonds listed in the Table. Currently, the Table allows ICE Clear Europe to purchase US Sovereign Bonds, UK Sovereign Bonds, EU Sovereign Bonds, US Government Agency Bonds, UK Government Agency Bonds, and EU Government Agency Bonds (collectively, the “permitted investments”), each with a ninety-day maximum maturity. The proposed rule change sets the maximum maturity of these permitted investments at thirteen months.

This change—extending the maximum maturity from ninety days to thirteen months—would align the maximum maturity for ICE Clear Europe’s investment of its regulatory capital with the maximum maturity ICE Clear Europe currently applies to its investment of cash provided by Clearing Members and ICE Clear Europe’s own contribution to the guaranty fund.⁷ Thus, the proposed change would establish a single, consistent maximum maturity for ICE Clear Europe’s investment in sovereign and government agency bonds, regardless of whether the source of the cash being invested is

⁷ Currently, the Procedures permit ICE Clear Europe to invest Clearing Member cash and ICE Clear Europe’s skin-in-the-game in the purchase of permitted investments with a maximum maturity of thirteen months. Notice, 88 FR at 20200.

from Clearing Members, ICE Clear Europe's contributions to the guaranty fund, or its regulatory capital.

There are two primary reasons for the proposed change. First, it would eliminate what ICE Clear Europe views as an unnecessary limitation on the maximum maturities of permitted investments.⁸ Although ICE Clear Europe's regulatory capital serves a different purpose from its Clearing Member cash and skin-in-the-game default resources, ICE Clear Europe believes that the same principles of capital preservation and maintaining high levels of liquidity are appropriate with respect to all the cash it manages, regardless of whether the cash is regulatory capital, collateral provided by Clearing Members, or ICE Clear Europe's own contributions to the guaranty fund. As such, ICE Clear Europe determined that it is not necessary for the maximum maturity for investments of its regulatory capital to be more restrictive than for its other investments of cash.⁹

Second, the proposed change would provide ICE Clear Europe with the flexibility to invest its regulatory capital in longer-term sovereign and government bonds than the Procedures currently permit. Although the additional maturity is only ten months, the additional flexibility may allow ICE Clear Europe to plan for longer investments and

⁸ Notice, 88 FR at 20201.

⁹ Id.

avoid having to invest or reinvest in shorter duration instruments during potential periods of market volatility.¹⁰

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹¹ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹² and Rule 17Ad-22(e)(16).¹³

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.¹⁴ The proposed rule change is consistent with Section 17A(b)(3)(F)¹⁵ because it improves ICE

¹⁰ Id. at 20200.

¹¹ 15 U.S.C. 78s(b)(2)(C).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(16).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

Clear Europe's ability to manage its investments without subjecting its investments to significantly greater risk.

The Commission believes that the changes to the Procedures discussed above help to improve ICE Clear Europe's management of its investments. As noted above, ICE Clear Europe's Procedures prohibit it from investing its regulatory capital in permitted investments that have a maturity greater than ninety days. At times, this limitation could subject ICE Clear Europe's regulatory capital to reinvestment risk¹⁶ and volatility risk.¹⁷ Under the proposed rule change, ICE Clear Europe can more effectively utilize investment strategies that would allow it to mitigate some of this reinvestment and volatility risk by purchasing longer term instruments when appropriate. Such flexibility could be important in light of current and expected market conditions, including to assist ICE Clear Europe in avoiding having to invest or reinvest in shorter duration instruments during potential periods of market volatility.

For the above reasons, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁸

B. Consistency with Rule 17Ad-22(e)(16) under the Act

Rule 17Ad-22(e)(16) requires that ICE Clear Europe establish, implement, maintain, and enforce, written policies and procedures reasonably designed to safeguard its own and its participants' assets, minimize the risk of loss and delay in access to these

¹⁶ Reinvestment risk is the risk that an investor will be unable to reinvest assets received from an investment at a rate comparable to their current rate of return.

¹⁷ Volatility risk in this context, i.e., sovereign and government agency bonds, refers to the risk that a bond's price will fluctuate due to changing interest rates.

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.¹⁹ The Commission previously found that applying the Procedures to ICE Clear Europe's regulatory capital helps ICE Clear Europe to safeguard its own and its Clearing Members' assets and helps ICE Clear Europe to invest such assets in instruments with minimal credit, market, and liquidity risks.²⁰ As discussed above, the Procedures would continue to apply to ICE Clear Europe's regulatory capital, with the only change being that ICE Clear Europe could invest its regulatory capital in instruments with a maturity of up to thirteen months, rather than ninety days.

Even with this change, the Commission continues to believe that ICE Clear Europe would safeguard its regulatory capital and invest it in instruments with minimal credit, market, and liquidity risks. The Commission believes this to be the case because investing in instruments with a maturity of up to thirteen months, rather than ninety days, could allow ICE Clear Europe to avoid having to invest or reinvest in shorter duration instruments during potential periods of market volatility. Moreover, the maximum maturity for regulatory capital would be the same as what the Commission previously

¹⁹ 17 CFR 240.17Ad-22(e)(16).

²⁰ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Investment Management Procedures and Treasury and Banking Services Policy, Securities Exchange Act Release No. 89211 (July 1, 2020), 85 FR 41082, 41086 (July 8, 2020) (File No. SR-ICEEU-2020-002).

approved for investments of cash from Clearing Members and ICE Clear Europe's skin in the game.²¹

For the above reasons, the proposed rule change is consistent with Rule 17Ad-22(e)(16) under the Act.²²

²¹ Id.; Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, To Revise the ICE Clear Europe Treasury and Banking Services Policy, Liquidity Management Procedures, Investment Management Procedures and Unsecured Credit Limits Procedures, Securities Exchange Act Release No. 86891 (Sept. 6, 2019), 84 FR 48191 (Sept. 12, 2019) (File No. SR-ICEEU-2019-012).

²² 17 CFR 240.17Ad-22(e)(16).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act²³ and Rule 17Ad-22(e)(16) thereunder.²⁴

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-ICEEU-2023-009) be, and hereby is, approved.²⁵

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,
Assistant Secretary.

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(16).

²⁵ In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁶ 17 CFR 200.30-3(a)(12).